

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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AMERICAN CIVIL LIBERTIES UNION, et. al.;	:	CIVIL ACTION
	:	
Plaintiffs,	:	NO. 98-5591
	:	
v.	:	
	:	
ALBERTO R. GONZALES, in his official capacity as	:	
ATTORNEY GENERAL OF THE UNITED STATES,	:	
	:	
Defendant.	:	
-----X		

PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION
TO EXTEND THE TIME FOR PRINCIPAL EXPERT
REPORTS

On April 26, 2006, defendant filed a motion to extend the time for principal expert reports by five days. Plaintiffs file this opposition to that motion.

This is the third time defendant has requested extensions of the pre-trial deadlines in this case. On the first occasion, the Court denied the motion, in part because defendant explained his need for the extension in a purely conclusory manner without providing specific facts to establish the requisite good cause. *See* Pre-Trial Order No. 21, December 7, 2005. On the second occasion, the Court called the parties to a conference and granted the requested extension only after each party submitted a supplemental letter explaining in detail the reasons for the extension. *See* Pre-Trial Order No. 24, March 1, 2006.

Now, defendant again seeks an extension, again asserting in the most conclusory fashion that although defendant will have had the data from Google for over a month

(and the data from AOL, Microsoft and Yahoo for many months), his experts cannot “complete their analysis.” No further explanation is given either for the motion itself or for its late timing. Defendant’s conclusory assertion is not an adequate explanation. It is facially insufficient to establish good cause. *See* Order, December 22, 2005, pp. 5, 7, 15 (defendant’s conclusory arguments insufficient).

Defendant further asks for an extension even for those experts for which he believes apparently that no extension is necessary. His sole explanation for this request is that it is “appropriate.” Again, this does not constitute good cause.

Finally, defendant proposes to maintain all other dates in the scheduling order. The effect of the extension is thus to limit the time plaintiffs have to supply rebuttal expert reports. Given defendant’s repeated reluctance to describe the nature of the study being done using the Google information, it is difficult to know if a rebuttal report will be necessary. However, given the time defendant has spent on the study, to shorten plaintiffs’ time for rebuttal would be manifestly unjust. That is especially the case because defendant failed to provide plaintiffs with the Google information until April 19, 2006, weeks after he received it.

Plaintiffs respectfully ask the Court to deny the motion. However, in the event the Court is inclined to grant the motion, plaintiffs respectfully request that:

The time within which the parties must file expert rebuttal reports be extended by the same number of days by which the schedule is extended. Thus, expert rebuttal reports would be due July 6, 2006 (allowing for the holiday). All other dates would remain the same.

Respectfully submitted,

DATE: April 26, 2006

/s/
ADEN J. FINE
American Civil Liberties Union Foundation
125 Broad St., 18th Floor
New York, New York 10004
(212) 549-2500

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on April 26, 2006, a true and correct copy of Plaintiffs' Response to Defendant's Motion to Amend the Case Management Order was filed electronically via the Court's ECF system, through which a notice of the filing will be sent to:

Raphael Gomez
United States Department of Justice
Civil Division, Room 7200
20 Massachusetts Avenue NW
Washington, D.C. 20530

/s/
Aden J. Fine